

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Charles W. Penland, Sr.,

Plaintiff,

vs.

Carolina First Bank; United States of
America, and its appointed trustee; and
Bonding Company Issuing Bond,

Defendants.

C.A. No. 6:07-3109-HMH

OPINION & ORDER

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit.

The Plaintiff filed the instant case on September 14, 2007, alleging that the Defendants violated his procedural due process rights and South Carolina's "right to cure" law during the seizure of his motor home and the personal possessions contained therein. Subsequently, in a letter filed on October 15, 2007, the Plaintiff indicated that he wanted to proceed only against Defendant Carolina First Bank.

This case was originally assigned to United States District Judge Henry F. Floyd, Jr. On October 25, 2007, Magistrate Judge William M. Catoe entered a Report and Recommendation recommending construing the Plaintiff's October 15, 2007, letter as a motion to amend the complaint to remove Defendants United States and Bonding Company, and granting the motion to amend. In addition, the Magistrate Judge recommended dismissing the case without prejudice and without issuance and service of process, and deeming the action a "strike" against the Plaintiff pursuant to the "three strikes" rule of 28 U.S.C. § 1915(g). The Plaintiff filed objections to the Report and Recommendation on November 9, 2007.

On April 15, 2008, Judge Floyd entered an order adopting the Report and Recommendation of the Magistrate Judge, dismissing the case without prejudice and without issuance and service of process, and deeming the action a “strike” against the Plaintiff pursuant to § 1915(g) (“April Order”). In addition, the order construed the Plaintiff’s October 15, 2007, letter as a motion to dismiss Defendants United States and Bonding Company, and granted the motion. Judgment was entered on April 16, 2008.

The Plaintiff filed a notice of appeal of the April Order on April 29, 2008.¹ The Fourth Circuit remanded the instant case on July 11, 2008, for further proceedings without making any substantive ruling on the Plaintiff’s appeal. On July 22, 2008, the case was reassigned to the undersigned. The Fourth Circuit’s mandate issued on September 2, 2008.

After review of the Report and Recommendation and the April Order, and for the reasons set forth therein, the court agrees with Judge Floyd’s April Order adopting the Report and Recommendation of the Magistrate Judge and dismissing the instant case without prejudice and without issuance and service of process.

¹ See Houston v. Lack, 487 U.S. 266 (1988).

It is therefore

ORDERED that the Plaintiff's complaint is dismissed without prejudice and without issuance and service of process. It is further

ORDERED that the instant action is deemed a "strike" against the Plaintiff pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
September 10, 2008

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.